

ORIGINAL

1 LYNN HUBBARD, III, SBN 69773
2 SCOTTLINN J HUBBARD, IV, SBN 212970
3 **DISABLED ADVOCACY GROUP, APLC**
4 12 Williamsburg Lane
5 Chico, CA 95926
6 Telephone: (530) 895-3252
7 Facsimile: (530) 894-8244

8 Attorneys for Plaintiff

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

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DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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13 BARBARA HUBBARD,

14 Plaintiff,

15 vs.

16 THE VONS COMPANIES, INC. dba
17 VONS #3063,

18 Defendant.
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No. '08 CV 0229 DMS POR

Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff Barbara Hubbard (“Hubbard”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Vons #3063
870 3rd Avenue
Chula Vista, CA 91911
(hereafter “the Store”)

2. Hubbard seeks damages, injunctive and declaratory relief, attorney fees and costs, against The Vons Companies, Inc. dba Vons #3063 (“Vons”) pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Vons owns, operates, or leases the Store, and consists of a person (or persons), firm, or corporation.

8. Hubbard has multiple conditions that affect one or more major life functions. She requires the use of motorized wheelchair and a mobility-equipped

1 vehicle, when traveling about in public. Consequently, Hubbard is “physically
2 disabled,” as defined by all applicable California and United States laws, and a
3 member of the public whose rights are protected by these laws.

4 V. FACTS

5 9. The Store is a sales or retail establishment, open to the public,
6 which is intended for nonresidential use and whose operation affects commerce.

7 10. Hubbard visited the Store and encountered barriers (both physical
8 and intangible) that interfered with—if not outright denied—her ability to use
9 and enjoy the goods, services, privileges, and accommodations offered at the
10 facility. To the extent known by Hubbard, the barriers at the Store included, but
11 are not limited to, the following:

- 12 • The tow away signage posted is not correct;
- 13 • There is an insufficient number of disabled parking spaces;
- 14 • The signage designating a parking space as “van accessible” is not correct;
- 15 • All of the access aisles have ramps encroaching into them, thereby causing
16 their slope and/or cross slope to be excessive;
- 17 • The checkstand designated as being accessible is not open;
- 18 • The checkstands’ counters are too high;
- 19 • The operable part of the pay-point machines is too high;
- 20 • The route to the women’s restroom is blocked by merchandise, with
21 multiple areas being less than 36 inches wide;
- 22 • The trash receptacle blocks the required 18 inches of strike side clearance
23 on the pull side of the women’s restroom door;
- 24 • The paper towel dispenser encroaches into the clear space needed to
25 access the water closet;
- 26 • The pipes underneath the lavatory are improperly wrapped; and,
- 27 • There is insufficient knee and toe clearance underneath the lavatory due to
28 the protruding pipes.

1 These barriers prevented Hubbard from enjoying full and equal access.

2 11. Hubbard was also deterred from visiting the Store because she
3 knew that the Store's goods, services, facilities, privileges, advantages, and
4 accommodations were unavailable to physically disabled patrons (such as
5 herself). She continues to be deterred from visiting the Store because of the
6 future threats of injury created by these barriers.

7 12. Hubbard also encountered barriers at the Store, which violate state
8 and federal law, but were unrelated to her disability. Nothing within this
9 Complaint, however, should be construed as an allegation that Hubbard is
10 seeking to remove barriers unrelated to her disability.

11 13. Vons knew that these elements and areas of the Store were
12 inaccessible, violate state and federal law, and interfere with (or deny) access to
13 the physically disabled. Moreover, Vons has the financial resources to remove
14 these barriers from the Store (without much difficulty or expense), and make the
15 facility accessible to the physically disabled. To date, however, Vons refuses to
16 either remove those barriers or seek an unreasonable hardship exemption to
17 excuse non-compliance.

18 14. At all relevant times, Vons has possessed and enjoyed sufficient
19 control and authority to modify the subject property to remove impediments to
20 wheelchair access and to comply with the Americans with Disabilities Act
21 Accessibility Guidelines and Title 24 regulations. Vons has not removed such
22 impediments and have not modified the subject property to conform to
23 accessibility standards. Vons has intentionally maintained the subject property
24 in its current condition and have intentionally refrained from altering the subject
25 property so that it complies with the accessibility standards.

15. Hubbard further alleges that the (continued) presence of barriers at the facility is so obvious as to establish Vons' discriminatory intent.¹ On information and belief, Hubbard avers that evidence of this discriminatory intent includes Vons' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the facility; conscientious decision to the architectural layout (as it currently exists) at the facility; decision not to remove barriers from the facility; and allowance that Vons' property continues to exist in its non-compliant state. Hubbard further alleges, on information and belief, that Vons are not in the midst of a remodel, and that the barriers present at the facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.²

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Hubbard incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Vons discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Store during each visit and each incident of deterrence.

¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

² Id.; 28 C.F.R. § 36.211(b)

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Plaintiff's Complaint

1 Failure to Remove Architectural Barriers in an Existing Facility

2 19. The ADA specifically prohibits failing to remove architectural
3 barriers, which are structural in nature, in existing facilities where such removal
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
5 achievable” is defined as “easily accomplishable and able to be carried out
6 without much difficulty or expense.” *Id.* § 12181(9).

7 20. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also specifically
10 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

11 21. Here, Hubbard alleges that Vons can easily remove the architectural
12 barriers at the Store without much difficulty or expense, and that Vons violated
13 the ADA by failing to remove those barriers, when it was readily achievable to
14 do so.

15 22. In the alternative, if it was not “readily achievable” for Vons to
16 remove the Store’s barriers, then Vons violated the ADA by failing to make the
17 required services available through alternative methods, which are readily
18 achievable.

19 Failure to Design and Construct an Accessible Facility

20 23. On information and belief, the Store was designed or constructed (or
21 both) after January 26, 1992—independently triggering access requirements
22 under Title III of the ADA.

23 24. The ADA also prohibits designing and constructing facilities for
24 first occupancy after January 26, 1993, that aren’t readily accessible to, and
25 usable by, individuals with disabilities when it was structurally practicable to do
26 so. 42 U.S.C. § 12183(a)(1).

1 25. Here, Vons violated the ADA by designing or constructing (or both)
2 the Store in a manner that was not readily accessible to the physically disabled
3 public—including Hubbard—when it was structurally practical to do so.³

4 Failure to Make an Altered Facility Accessible

5 26. On information and belief, the Store was modified after January 26,
6 1992, independently triggering access requirements under the ADA.

7 27. The ADA also requires that facilities altered in a manner that affects
8 (or could affect) its usability must be made readily accessible to individuals with
9 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
10 an area that contains a facility's primary function also requires adding making
11 the paths of travel, bathrooms, telephones, and drinking fountains serving that
12 area accessible to the maximum extent feasible. Id.

13 28. Here, Vons altered the Store in a manner that violated the ADA and
14 was not readily accessible to the physically disabled public—including
15 Hubbard—to the maximum extent feasible.

16 Failure to Modify Existing Policies and Procedures

17 29. The ADA also requires reasonable modifications in policies,
18 practices, or procedures, when necessary to afford such goods, services,
19 facilities, or accommodations to individuals with disabilities, unless the entity
20 can demonstrate that making such modifications would fundamentally alter their
21 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

22 30. Here, Vons violated the ADA by failing to make reasonable
23 modifications in policies, practices, or procedures at the Store, when these
24 modifications were necessary to afford (and would not fundamentally alter the
25 nature of) these goods, services, facilities, or accommodations.

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28 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action
as a private attorney general under either state or federal statutes.

39. She also seeks to enjoin Vons from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. Hubbard incorporates the allegations contained in paragraphs 1 through 30 for this claim.

41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

44. Vons' aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

46. Hubbard was damaged by Vons' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

47. Hubbard also seeks to enjoin Vons from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. Hubbard incorporates the allegations contained in paragraphs 1 through 13 for this claim.

49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

51. Hubbard alleges the Store is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Store was not exempt under Health and Safety Code § 19956.

52. Vons' non-compliance with these requirements at the Store aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against Vons for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Vons violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.

- 1 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 2 5. Interest at the legal rate from the date of the filing of this action.
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4 DATED: February 4, 2008

DISABLED ADVOCACY GROUP, APLC

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7 LYNN HUBBARD, III
8 Attorney for Plaintiff
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⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BARBARA HUBBARD

DEFENDANTS

THE VONS COMPANIES, INC. dba VONS #3063

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

DEPUTY

08 CV 0229 DMS POR

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question
(U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF DEF
☐ 1 ☐ 1Incorporated or Principal Place
of Business In This StatePTF DEF
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2Incorporated and Principal Place
of Business In Another State☐ 5 ☐ 5Citizen or Subject of a
Foreign Country☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/05/2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 143781

AMOUNT \$260

2/5/08 DM